

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GEORGE W. LUSTER, JR.,

Petitioner,

vs.

DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS, *et al.*,

Respondents.

2:04-cv-00334-RLH-NJK

ORDER

This habeas matter comes before the Court on petitioner's counsel's motion (#133) to withdraw as counsel and on petitioner's motion (#137) to stay consideration of the motion to withdraw.

The Court will grant the motion to stay consideration to withdraw to the extent that the Court will deny the motion to withdraw without prejudice. Counsel can file a new motion to withdraw if and as the circumstances warrant.¹

The Court takes this action with one major caveat. The Court, repeatedly, has stated in this case that petitioner may communicate with the Court only through counsel. For example, in a May 16, 2011, order, the Court stated:

This Court's April 20, 2011, order could not have been more clear or emphatic: . . . "that petitioner shall not file any papers *pro se*, and he shall not communicate otherwise with the Court except through counsel."

¹Counsel needs to select a proper description on CM/ECF when she files a motion. The description selected by counsel has no correlation to the actual motion. Misleading docket descriptions will not suffice.

1 Petitioner further has directly violated the order by
 2 filing a *pro se* submission. He acknowledges receipt of the order,
 3 seeks to explain his prior *pro se* filing, and indicates that "I'll call
 4 you soon to further discuss the matter." The words "shall not file"
 and "shall not communicate" mean what they say. If petitioner
 has explanations, apologies, or other communications to present
 to the Court, he must present them through counsel.

5 The Court advised petitioner in the prior order as follows:
 6 "Any further violations of the Court's orders in [this] regard may
 7 lead to the imposition of sanctions, including dismissal of the
 8 petition." Petitioner previously has been advised in this case that
 9 he must communicate with the Court only through counsel, yet he
 10 continues to communicate with the Court *pro se*. The Court has
 11 few effective sanctions in this matter short of dismissal to secure
 12 compliance with its orders following upon repeated refusals to
 13 comply, as it appears that petitioner is without funds and is
 14 incarcerated under sentences of life without the benefit of parole.
 15 If petitioner continues to seek to communicate with the Court *pro*
 16 *se*, he will be directed to show cause forthwith – through counsel
 17 – why the petition should not be dismissed for his failure to
 18 comply with the repeated orders of this Court.

19

20 Further disregard of the Court's orders – by counsel and/or
 21 by petitioner – will lead to harsher action being taken.

22

23 IT FURTHER IS ORDERED that, within **ten (10) days** of
 24 entry of this order, petitioner's counsel additionally shall file a
 25 notice that counsel has provided petitioner with a copy of this
 26 order.

27 IT FURTHER IS ORDERED that #98 is STRICKEN and,
 28 once again, **that petitioner shall not communicate with the
 Court other than through counsel.**

#99, at 1-2 (emphasis in original).

That would seem to be a clear order.

Petitioner nonetheless has submitted multiple *pro se* communications (## 129, 130,
 132 & 136) to the Court since the time of the last, seemingly clear, order.

The Court's delay in screening the last amended pleading after counsel presented a
 prior pleading with numerous deficiencies does not provide any reason or justification
 whatsoever for these *pro se* filings. Any request for expedited or other relief in the district
 court must be presented by counsel and not petitioner *pro se*. Counsel has demonstrated

1 that she has the ability to file court papers seeking expedited relief, albeit not in a filing first
2 in this Court. Nor is there any occasion for petitioner to file *pro se* copies of letters sent to
3 counsel requesting that she take certain action. Further, petitioner may not request status
4 updates or copies of documents from the Court or the Clerk; he must make those requests
5 to his counsel. In short, as this Court thought that it had repeatedly made clear in this action:
6 **“petitioner shall not communicate with the Court other than through counsel.”**

7 Petitioner has run out of warnings.

8 If following notification of this order, petitioner presents the Court with any further *pro*
9 *se* papers – other than a response to a then-pending motion to withdraw counsel – petitioner
10 thereafter will be directed to show cause through counsel why the matter should not be
11 dismissed for failure to comply with the repeated orders of the Court. Unless and until such
12 time as petitioner is copied with an order from this Court granting a motion to withdraw as
13 counsel without appointment of replacement counsel, petitioner shall make **all** status inquiries
14 to counsel, not the Court, including as to the status of a motion to withdraw. Delay in the
15 Court reaching a submission, again, does not provide cause for petitioner to communicate
16 with the Court *pro se* rather than through counsel.

17 IT THEREFORE IS ORDERED that petitioner’s motion (#137) to stay consideration of
18 the motion (#133) to withdraw is GRANTED IN PART and DENIED IN PART, to the extent
19 that petitioner’s counsel’s motion (#133) to withdraw as counsel is DENIED without prejudice.

20 IT FURTHER IS ORDERED that, within **ten (10) days** of entry of this order, petitioner’s
21 counsel additionally shall file a notice that counsel has provided petitioner with a copy of this
22 order.

23 DATED: April 3, 2013.

24
25
26 
27 ROGER L. HUNT
28 United States District Judge